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No. 88-1431

In the Supreme Court

OF THE

United States

OCTOBER TERM, 1988

FERDINAND MARCOS, IMELDA MARCOS,
AND RAMON AZURIN,
Petitioners,

vs.

REPUBLIC OF THE PHILIPPINES,
Respondent.

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

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QUESTIONS PRESENTED

1. Whether this Court should grant certiorari to review the decision of an *en banc* panel of the Ninth Circuit Court of Appeals affirming an interlocutory order of the District Court.

2. Whether the act of state doctrine barred issuance of the preliminary injunction preserving Petitioners' assets in the absence of any evidence that Petitioners obtained their assets through "acts of state."

3. Whether the political question doctrine barred issuance of the preliminary injunction because United States courts are incapable of applying any judicially manageable standards to fraud, misappropriation and other unlawful conduct, in the United States and elsewhere, by the former President of The Republic of the Philippines.

4. Whether the District Court abused its discretion by exercising pendent jurisdiction over and issuing an injunction based upon the Philippines' non-federal claims.

5. Whether the District Court abused its discretion in issuing an *in personam* injunction in the absence of any evidence of potential conflicts with the sovereignty of any foreign nation.

6. Whether the District Court lacked jurisdiction to issue the preliminary injunction because The Republic of the Philippines is not a "person" entitled to sue on its own behalf under the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. § 1961 *et seq.*

LIST OF PARTIES

In addition to the parties listed in the Petition, the following parties are named in the Second Amended Complaint: Roberto S. Benedicto, Benjamin "Kokoy" Romualdez, Bienvenido R. Tantoco, Gliceria R. Tantoco, Lei Investments, Ltd., and California Overseas Bank.

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BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

Respondent, The Republic of the Philippines, respectfully submits this Brief in Opposition to the Petition for a Writ of Certiorari filed by Petitioners, Ferdinand E. Marcos, Imelda R. Marcos, and Ramon Azurin. The Philippines prays that the Writ of Certiorari to review the decision of the Court of Appeals for the Ninth Circuit entered in this case on December 1, 1988, be denied.

STATEMENT OF THE CASE

A. The Complaint and Motion for Preliminary Injunction.

The Philippines filed this action in the United States District Court for the Central District of California on June 16, 1986, together with an emergency application for a temporary restraining order and a preliminary injunction. The verified Complaint[1] alleged that, during his twenty years as President of the Philippines, Mr. Marcos systematically converted to his own use, and that of his friends, family and associates, millions of dollars in property belonging to the Philippine government and people. The Complaint alleged that some of these assets originated in the United States, as the direct or indirect product of various United-States-funded or supported programs of investment and assistance to the Philippines. Marcos and his associates invested these converted assets in the United States, or moved the assets through the United States, in order to conceal and facilitate the fraud, conversion and theft perpetrated against the Philippines.

Seven days after the Complaint was filed, the Philippines presented the District Court with evidence that the Marcoses' net worth increased by at least $1.5 billion during the term of Marcos's Presidency, while the Marcoses reported cumulative earnings of only $337,429. This discrepancy provided compelling evidence that, after further investigation and discovery, the Philippines would be

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[1]A copy of the Complaint is appended hereto. The Philippines has since filed two amended complaints, naming additional defendants and detailing further allegations of misconduct by the Marcoses and their associates. The District Court has granted the Philippines until June 20, 1989, to file a motion for leave to file a Third Amended Complaint.

able to prove that the Marcoses acquired their wealth through unlawful means. The Philippines also presented evidence of a number of the specific unlawful means by which the Marcoses had obtained their assets, including the receipt of bribes and kickbacks; the misappropriation of monies belonging to or intended for the Republic of the Philippines, including United States foreign aid; and the direct raiding of the Philippine treasury.

The Philippines also presented substantial evidence that the defendants have concealed their illegally obtained assets, thus demonstrating a need for preliminary relief to protect the Philippines' ability ultimately to recover those assets. Specifically, the evidence showed that the Marcoses had deposited $1.5 billion in various Swiss bank accounts under aliases or in the names of shell entities, and had transferred large sums of money through elaborate real estate and banking transactions in the United States and elsewhere.

The defendants presented no contrary evidence. They neither denied owning the assets alleged in the Complaint nor denied having stolen those assets from the Philippines. Moreover, the defendants presented no evidence that the preliminary injunction would cause them any hardship whatsoever. To the contrary, the Marcoses explicitly stated that they "would not object to a preservation of the *status quo* of the assets covered by the injunction in this case . . . ." (Marcos Reply Brief in Ninth Circuit at 6.)

B. The District Court's Order.

The District Court entered its Order Issuing Preliminary Injunction on June 25, 1986, based on the evidence available nine days after the Complaint was filed. (Petitioners' Appendix ("P.A.") 96a.) The court found that

the evidence established a "substantial likelihood that defendants have operated, conducted the affairs of, and invested in enterprises in violation of RICO," and that the affairs of such enterprises "were conducted through a pattern of racketeering activity." (P.A. 97a.) The District Court ruled that "[a] foreign government is a 'person' within the meaning of 18 U.S.C. § 1961(3) and may bring suit under RICO." (P.A. 98a.) The court found that it had pendent jurisdiction over the remaining claims because they "arise from a common nucleus of operative fact." (*Id.*)

The court found that there was a "substantial danger" that, in the absence of preliminary relief, the defendants "would transfer or conceal funds, property, books and records, placing said items beyond the Court's process and recovery by the Philippines in this action," and that the Philippines would be irreparably injured as a result. (*Id.*) The District Court also found a "substantial likelihood" that the Philippines will prevail in this action. (*Id.*)

Accordingly, the court issued an injunction which (1) prohibits the defendants from receiving or obtaining possession or control over the property held by the United States Customs Service in Hawaii; (2) requires Lloyds Bank to maintain custody over all funds held for the benefit of the defendants; (3) prohibits the defendants from transferring, disposing of, encumbering, or concealing any assets of the Marcoses; and (4) prohibits defendants from destroying, disposing of, or concealing documents related to such assets. (P.A. 99a-101a.) The court's order permits the Marcoses to "use said funds to pay attorneys' fees and normal living expenses." (P.A. 101a.)

C. Proceedings in the Ninth Circuit Court of Appeals.

On June 4, 1987, a divided panel of the Ninth Circuit reversed the preliminary injunction. The majority held that the Philippines is not likely to prevail on its claims, because "as to many of the assets in question, adjudication will be barred by the act of state doctrine, the political question doctrine or both." (P.A. 67a.)

The Ninth Circuit agreed to rehear the case *en banc*, and requested an *amicus curiae* brief on the act of state doctrine from the United States. The United States submitted an *amicus* brief stating that "the Department of State has informed us that there are no foreign policy interests of the United States in our present relations with the government of the Philippines that would be adversely affected by adjudication," and that "[o]n the present record, it is not clear that any act of state . . . is involved in this case." (P.A. 139a-140a.)

On December 1, 1988, the *en banc* Court of Appeals affirmed the preliminary injunction. The court concluded that the Philippines had a well-pleaded RICO claim providing the District Court with jurisdiction; that neither the act of state nor political question doctrine barred issuance of the preliminary injunction; that the District Court had properly exercised jurisdiction over the Philippines' pendent claims; and that the injunction as framed was warranted by the evidence. The *en banc* court held that "[a] serious question of liability has been presented and the Republic has a fair chance of success on the merits of its case," and that "[h]ardship to the Republic would have been great and irreparable if the district court had not taken its prudent, amply justified action to keep the Marcoses' assets from disappearing." (P.A. 17a.)

REASONS FOR DENYING THE WRIT

I.

CERTIORARI SHOULD NOT BE GRANTED TO REVIEW THE *EN BANC* COURT'S INTERLOCUTORY AFFIRMANCE OF THE PRELIMINARY INJUNCTION.

The issue before the *en banc* panel of the Ninth Circuit was whether the District Court abused its discretion in issuing the preliminary injunction. In affirming the injunction, the Ninth Circuit held only that "[a] serious question of liability has been presented and the Republic has a fair chance of success on the merits of its case." (P.A. 17a.) No final decision has been rendered with respect to any of the issues in the case. The District Court's ultimate decision with respect to each of those issues will be subject to review by the Ninth Circuit on appeal from any final judgment, and by this Court on a writ of certiorari to the Ninth Circuit following such review. Moreover, as the *en banc* opinion states, and as Petitioners do not contest, "[t]he Marcoses have offered *no evidence of any hardship* they would suffer if the injunction were issued." (P.A. 12a; emphasis added.)

In these circumstances, there is no reason for this Court to grant certiorari at this time. As the Court has stated, "this court should not issue a writ of certiorari to review a decree of the circuit court of appeals on appeal from an interlocutory order, unless it is necessary to prevent extraordinary inconvenience and embarrassment in the conduct of the cause." *American Construction Co. v. Jacksonville, T. & K. W. R. Co.*, 148 U.S. 372, 384 (1893); *accord Hamilton-Brown Shoe Co. v. Wolf Bros. & Co.*, 240 U.S. 251, 258 (1916) ("except in extraordinary cases, the writ is not issued until final decree"). There has been no showing, indeed Petitioners do not even argue, that this is

an "extraordinary" situation in which certiorari should be granted to review an interlocutory order. The United States has stated that "there are no foreign policy interests of the United States in our present relations with the government of the Philippines that would be adversely affected by adjudication [of the Philippines' claims]."

II.

CERTIORARI SHOULD NOT BE GRANTED TO REVIEW THE COURT OF APPEALS' DECISIONS REGARDING THE ACT OF STATE AND POLITICAL QUESTION DOCTRINES.

A. Act of State Doctrine.

This case presents unique circumstances relevant to the applicability of the act of state doctrine. The Complaint alleges acts of corruption for personal gain by a foreign government official. That official is no longer a part of the foreign government, and is now residing in the United States. The plaintiff is the foreign government itself, which seeks to recover money stolen from it by the former official, and which expressly requests that the United States courts adjudicate its claims. The Executive Branch of the United States has advised the Court of Appeals that "there are no foreign policy interests of the United States in our present relations with the government of the Philippines that would be adversely affected by adjudication [of the Philippines' claims]." The Executive Branch itself has made allegations against Petitioners in a criminal indictment that are similar to the allegations of the Philippines' Complaint. Finally, as the *en banc* Court of Appeals noted, "the Marcoses offered no evidence whatsoever to support the classification of their acts as acts of state." (P.A. 9a.)

These circumstances do not present an appropriate situation for this Court to grant certiorari to review abstract act-of-state issues at an interlocutory stage of the proceedings. As explained below, the Court of Appeals' decision does not conflict with any decision of this Court or of any circuit. To the contrary, the decision was fully warranted by existing authority. Moreover, if Petitioners ever present evidence in the courts below that they acquired some of their vast wealth through acts of state, the District Court and Court of Appeals will address the applicability of the act of state doctrine to particular claims on a more developed record. This Court will have the opportunity to review the final decisions of those courts if it deems such review appropriate.

1. No Conflict Exists Among the Courts of Appeals with Regard to Corrupt Acts of Foreign Officials for Personal Gain.

Petitioners assert that there is a "conflict in the Circuits on the application of the act of state doctrine where corruption is alleged." (Petition at 7.) Petitioners state that some courts "have determined that the act of state doctrine does not prevent investigation into whether the decisions of foreign governments in granting contracts were influenced by bribery of foreign officials," citing decisions by the Third and Fifth Circuit Courts of Appeals.[2] (*Id.*, at 6.) Petitioners then contrast these decisions with others that "refuse to question the reasons or motivations underlying governmental acts," citing deci-

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[2]*Williams v. Curtiss-Wright Corp.*, 694 F.2d 300 (3d Cir. 1982); *Environmental Tectonics v. W.S. Kirkpatrick, Inc.*, 847 F.2d 1052 (3d Cir. 1988), *petition for cert. filed* (No. 87-2066); *Industrial Investment Development Corp. v. Mitsui & Co.*, 594 F.2d 48 (5th Cir. 1979), *cert. denied*, 445 U.S. 903 (1980).

sions by the Ninth and Second Circuit Courts of Appeals.[3] (*Id.*, at 6-7.) None of the latter decisions involved circumstances similar to those here. None involved a lawsuit by a foreign government, or a lawsuit seeking to recover property misappropriated through corrupt acts for personal gain by a former government official, or a situation where the Executive Branch had expressly stated that adjudication of the claims would not adversely affect the United States' foreign relations. Instead, each involved a lawsuit between two private business interests in which, rather than seeking recovery of property misappropriated from a foreign government, as the Philippines does here, one business party was challenging the legal validity of the official act of a foreign nation. Thus, any conflict among these decisions does not warrant the grant of certiorari here.

There is no conflict among the circuits over the application of the act of state doctrine to the circumstances of this case. Both the Second and Ninth Circuits have held that the doctrine does not preclude adjudication of the Philippines' claims against Petitioners. *See Republic of the Philippines v. Marcos,* 806 F.2d 344 (2d Cir. 1986), *cert. denied,* 107 S.Ct. 2178 (1987). The Fifth Circuit has also refused to apply the act of state doctrine where a foreign government sought an adjudication by a federal court with respect to corrupt acts for personal gain by a former official. *Jimenez v. Aristeguieta,* 311 F.2d 547 (5th

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[3] *Occidental Petroleum Corp. v. Buttes Gas & Oil Co.,* 331 F. Supp. 92 (C.D. Cal. 1971), *aff'd,* 461 F.2d 1261 (9th Cir.), *cert. denied,* 409 U.S. 950 (1972); *Northrop Corp. v. McDonnell Douglas Corp.,* 705 F.2d 1030 (9th Cir.), *cert. denied,* 464 U.S. 849 (1983); *Clayco Petroleum Corp. v. Occidental Petroleum Corp.,* 712 F.2d 404 (9th Cir. 1983), *cert. denied,* 464 U.S. 1040 (1984); *Hunt v. Mobil Oil Co.,* 550 F.2d 68 (2d Cir.), *cert. denied,* 434 U.S. 984 (1977).

Cir. 1962).[4] Petitioners have cited no decision, and Respondent is aware of none, reaching a different result under similar circumstances.

2. No Conflict Exists Among the Courts of Appeals or Between the Ninth Circuit's Decision and Any Decision of this Court with Regard to the Burden of Establishing the Applicability of the Act of State Doctrine.

Petitioners somewhat vaguely suggest that the Court should grant certiorari to "consider generally whether the treatment of the act of state doctrine as an affirmative defense is compatible with the operation of the act of state doctrine as an abstention doctrine." (Petition at 9.) In support of this suggestion, Petitioners merely cite several decisions, including *American Banana Co. v. United Fruit Co.*, 213 U.S. 347 (1909), in which the courts determined that the act of state doctrine applied, based upon an examination of the allegations of the complaint. Petitioners then assert that "the *en banc* panel failed to undertake such an examination." (Petition at 8.) There is no evidence that the *en banc* panel failed to examine the Complaint. The Ninth Circuit stated that "[t]he burden of proving acts of state rested upon [Petitioners]," citing this Court's decision in *Alfred Dunhill of London, Inc. v. Cuba*, 425 U.S. 682 (1976), and that Petitioners had not even attempted to meet that burden. (P.A. 9a.) Petition-

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[4]Several other courts have held that the act of state doctrine precludes inquiry only with respect to actions of foreign government officials that are taken in the public interest, not those taken to achieve private or personal interests. *E.g., Compania de Gas de Nuevo Laredo, S.A. v. Entex, Inc.*, 686 F.2d 322, 326 (5th Cir. 1982), *cert. denied*, 460 U.S. 1041 (1983); *Timberlane Lumber Co. v. Bank of America*, 549 F.2d 597, 606 (9th Cir. 1976); *Sharon v. Time Inc.*, 599 F. Supp. 538, 544 (S.D.N.Y. 1984).

ers do not even cite *Alfred Dunhill,* in which this Court placed the burden of establishing the applicability of the act of state doctrine on the party asserting it as a bar to adjudication. 425 U.S. at 694.

There is no conflict in the circuits, for those decisions that apply the act of state doctrine based on the allegations of the complaint do not stand for a contrary rule. As with any affirmative defense, in some cases, such as those cited by Petitioners, the applicability of the doctrine appears clearly on the face of the complaint. In others, as here, its applicability is not apparent on the face of the complaint and will depend upon the evidence later adduced. If Petitioners ever introduce evidence that they acquired any portion of their vast wealth through acts of state, the District Court will be able to determine whether the act of state doctrine applies to the specific conduct in question. The Ninth Circuit and this Court will have the opportunity to review that decision if appropriate.

3. No Conflict Exists Between Decisions of the Courts of Appeals and Decisions of this Court with Respect to Application of the Act of State Doctrine Where It Is Asserted Against A Foreign Sovereign Plaintiff.

Both the *en banc* panel of the Ninth Circuit and the Second Circuit held that the justification for applying the act of state doctrine is weakened where it is asserted against a foreign sovereign plaintiff that is making claims against one of its former officials. Petitioners contend that these holdings are in conflict with this Court's decision in *Banco Nacional de Cuba v. Sabbatino,* 376 U.S. 398 (1964). In that case, the Cuban government sought to recover certain property it had expropriated prior to shipment of the property from Cuba to the United States. The defendants asserted that the expropriation decree

was invalid, but this Court held that the act of state doctrine precluded any inquiry into the validity of the decree. The Court noted that the "sensitivity in regard to foreign relations and the possibility of embarassment to the executive" were heightened where invalidating the decree would be a "rebuke to a recognized power" which was "a suitor in our courts." *Id.*, at 437.

But the Court also emphasized, in a passage relied upon by the Ninth and Second Circuits but not quoted by Petitioners, that a change of governments in the foreign country might dictate a different result:

> The balance of relevant considerations may also be shifted if the government which perpetrated the challenged act of state is no longer in existence, . . . for the political interest of this country may, as a result, be measurably altered.

Id., at 428. Even more clearly does the balance of considerations shift when the perpetrator is no longer in power *and* the newly-recognized government itself is seeking the adjudication. *See Republic of the Philippines v. Marcos*, 806 F.2d at 359.

Indeed, the manner in which Petitioners would have the act of state doctrine applied is wholly inconsistent with its purpose: to avoid embarrassment of the Executive Branch in its conduct of foreign relations. *Alfred Dunhill, supra*, 425 U.S. at 697. The present government of the Philippines has requested that the United States courts assist it in recovering money stolen by former President Marcos, who now resides in the United States. The State Department has determined, and has communicated to the Ninth Circuit, that honoring the Philippines' request would in no way jeopardize the foreign relations of the United States. Moreover, the Justice Department itself

has filed criminal charges against the Marcoses that are in many respects similar to the allegations of the Philippines' Complaint. In these circumstances, it is not a failure to apply the act of state doctrine, but a refusal to adjudicate the Philippines' claims, that would threaten to embarrass the Executive Branch in its conduct of foreign relations.

B. Political Question Doctrine.

Petitioners contend that this Court should grant certiorari to determine whether "President Marcos's invocation of martial law gave him dictatorial powers that defy judicial examination." (Petition at 11.) Petitioners seek to have this Court adopt the rule advanced by the original majority panel in the Ninth Circuit, that "no legal restraints can prevail against dictatorial power. A dictator can do whatever he can get away with." (P.A. 66a.)

Such a ruling, however, would not represent an application of the political question doctrine; it would not be a finding that the courts are incapable, by reason of a lack of manageable standards, of determining *whether* Marcos's actions were legal. Instead, it would amount to adoption of a wholly unprecedented rule of substantive law: that everything a foreign "dictator" does is necessarily legal, and that a dictator is therefore not subject to liability for any action he takes, no matter how violent or avaricious. The *en banc* panel of the Ninth Circuit correctly rejected such a rule, noting both that "[b]ribetaking, theft, embezzlement, extortion, fraud, and conspiracy to do these things are all susceptible of concrete proofs that need not involve political questions," and that "questions of foreign law are not beyond the capacity of our courts." (P.A. 9a.)

Petitioners make two arguments, each without merit. First, they contend, without citation to anything in the record, that "President Marcos's powers . . . were more than 'extraordinary,' they were absolute." (Petition at 12.) Even were this true, there is no evidence of it in the record. To the contrary, the verified complaint shows that Marcos repeatedly acknowledged his obligation to govern "pursuant to his oath of office and the Constitution and Laws of the Philippines," and that Marcos's acts were in violation of existing Philippine laws. Moreover, Marcos himself never asserted in either the District Court or the Court of Appeals the sweeping proposition advanced by the original Ninth Circuit panel and first adopted by Petitioners on this Petition. To the contrary, Marcos himself contended below that provisions of the Philippine Constitution applied to his conduct as President of the Philippines.

Second, Petitioners contend that United States courts are incapable of interpreting foreign laws, including the Philippine Constitution, or of adjudicating the legality of acts taken under martial law. This Court has not agreed that interpreting foreign laws is beyond the capacity of the federal courts. *See Fed. R. Civ. P.* 44.1 ("The Court, in determining foreign law, may consider any relevant material or source"); *Zschernig v. Miller*, 389 U.S. 429, 461 (1968) (Harlan, J., concurring). Moreover, the Court has rejected the argument that the existence of "martial law" precludes judicial review of a government official's conduct. *See Duncan v. Kahanamoku*, 327 U.S. 304, 315 (1946) (martial law did not authorize supplanting of authority of civil courts); *Sterling v. Constantin*, 287 U.S. 378, 401 (1932) ("What are the allowable limits of military discretion [under martial law], and whether or not they have been overstepped in a particular case, are judicial questions"); *Laird v. Tatum*, 408 U.S. 1, 19

(1972) (Douglas, J., dissenting on other grounds) ("Even when 'martial law' is declared . . . its appropriateness is subject to judicial review").

The District Court has yet to decide what law governs the various actions of the defendants. Once the Court decides what law applies, it can determine whether there are judicially manageable standards for evaluating the legality of Petitioners' conduct under that law. If the District Court reaches the wrong conclusions about the applicable law, the political question doctrine, or the legality of Marcos's actions under that law, those conclusions will be subject to review by the Court of Appeals and this Court at the appropriate time. This Court should not grant certiorari now, to review Petitioners' novel claim that the political question doctrine grants immunity in our courts to a deposed foreign "dictator."

III.

CERTIORARI SHOULD NOT BE GRANTED TO REVIEW THE DISCRETIONARY EXERCISE OF PENDENT JURISDICTION OVER THE PHILIPPINES' NON-FEDERAL CLAIMS.

A. The District Court Did Not Abuse Its Discretion in Exercising Jurisdiction Over Pendent Non-Federal Claims Which May Arise Under Foreign Law.

Petitioners assert that this Court should "review whether the *Gibbs* factors apply with equal force" where the pendent claims arise "principally under foreign law." (Petition at 14-15.) This suggestion lacks merit for several reasons. Petitioners offer no explanation as to how or why the factors set forth in *United Mine Workers v. Gibbs*, 383 U.S. 715 (1966), apply with less "force" in such cases.

No cases or commentators cited by Petitioners even suggest that *Gibbs* provides an inadequate framework for assessing pendent jurisdiction over foreign claims.[5]

The concerns raised by Petitioners are adequately addressed within *Gibbs'* concern for "comity" and obtaining a "surer-footed reading of applicable law." *Gibbs, supra* 383 U.S. at 726. These concerns were considered and properly rejected by the courts below. Petitioners argue here, as Amicus argued below, that foreign law "often is the product of a legal culture alien to U.S. Courts." (Petition at 14.) Whether or not this is often the case, there is no particular reason to expect any such difficulty here. Modern Philippine law, for example, grew out of American jurisprudence, *see generally Asiatic Petroleum Co. Ltd. v. Insular Collector of Customs*, 297 U.S. 666 (1936) (noting the history of United States Supreme Court review of appeals from the Supreme Court of the Philippines prior to the 1937 Independence Act), and Philippine courts frequently look for guidance to American precedents and commentators.[6] To the extent that the District Court later determines that aspects of the pendent claims should be judged under Philippine law, there is no reason to believe that the District Court will find

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[5]Petitioners cite *Vespa of America Corp. v. Bajaj Auto Ltd.*, 550 F. Supp. 224, 227-30 (N.D. Cal. 1982) as a case where the court applied not *Gibbs*, but the Ninth Circuit's analysis in *Timberlane Lumber Co. v. Bank of America*, 549 F.2d 597 (9th Cir. 1976). In fact, *Vespa* quoted and applied the *Gibbs* standard, *Vespa, supra*, 550 F. Supp. at 227, 230, and merely relied on *Timberlane* for a "ready made framework" for a detailed assessment of "comity" considerations — one of several factors identified in *Gibbs*. *Vespa, supra*, 550 F. Supp. at 229.

[6]*See, e.g., Miguel v. Court of Appeals*, 29 S. Ct. Anno. 761, 775 (Phil. Sup. Ct. 1969) (drawing on U.S. precedents in determining the effects of a constructive trust).

such legal issues especially difficult or unfamiliar.[7] If vexing foreign legal issues later arise in connection with particular claims, the District Court can again consider whether pendent jurisdiction is appropriate over the claims in question, in light of all the circumstances.

Petitioners also claim that foreign courts *may* find federal court resolution of foreign issues offensive and *may* be "openly hostile" to American judgments "bearing little nexus to the United States." (Petition at 14-15.) This speculative worry has no bearing on this case, with its substantial United States nexus. Marcos maintains substantial assets here, and his fraudulent conduct and dealings in this country violated United States law. Moreover, Marcos resides here. Indeed, "[t]he United States, in the public interest of the nation, has imposed a departure control order on defendant Ferdinand Marcos." (P.A. 134a n.20.) As the United States seems to concede,

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[7]Indeed, the Philippine law governing claims of fraud and imposition of constructive trusts is almost identical to that of California. *Compare, e.g.,* Cal. Civ. Code § 2224 ("One who gains a thing by fraud, accident, mistake, undue influence, the violation of a trust, or some other wrongful act . . . is an involuntary trustee of the thing gained, for the benefit of the person who would otherwise have had it") *with* Philippine Civ. Code, Art. 1456 ("If property is acquired through mistake or fraud the person obtaining it is, by force of law, considered a trustee of an implied trust for the benefit of the person from whom the property comes").

Similarly, because of the prominence of Swiss and American banks in international finance, the United States district courts are frequently called upon to resolve Swiss legal issues, and frequently do so without apparent difficulty. *See, e.g., Gutor International AG v. Raymond Packer Co., Inc.,* 493 F.2d 938, 946 (1st Cir. 1974); *Maiden v. Biehl,* 582 F. Supp. 1209, 1215-17 (S.D.N.Y. 1984); *United States v. Firestone Tire and Rubber,* 518 F. Supp. 1021 (N.D. Ohio 1981); *Miller v. Wells Fargo Bank Inter Corp.,* 406 F. Supp. 452, 482-83 (S.D.N.Y. 1975), *aff'd,* 540 F.2d 548 (2d Cir. 1976).

this action probably "renders the Philippine forum 'unavailable' " (P.A. 134a), thus eliminating the only forum capable of rendering a "surer-footed reading" of Philippine law. Given these circumstances, and the presence of the Philippines as plaintiff, there is no reason to expect Philippine hostility toward the decision of the District Court.

B. The District Court Did Not Abuse Its Discretion in Finding that the Federal and Non-Federal Claims Arise from a Common Nucleus of Operative Facts.

The District Court found, and the Court of Appeals agreed, that the federal and pendent claims are based on a common nucleus of operative facts. As the Ninth Circuit succinctly summarized this finding:

> "The RICO claims cannot be proved without getting deeply into the pendent claims and proving some or all of them. Because the acts charged, if proved, support both the RICO and the non-RICO claims, the district court has subject matter jurisdiction over all claims in the Republic's complaint."

(P.A. 6a.)

Petitioners never suggest that this factual finding was clearly erroneous. They note only, as Amicus did below, that " '*it is not clear* to what extent the bulk of plaintiff's nonfederal claims arise from a "common nucleus of operative facts" with the federal claim.' " Petition at 15 (emphasis added). This faint-hearted disagreement with the District Court's factual finding ignores the applicable appellate standard and presents no issue worthy of interlocutory review.

The courts below properly found that the Philippines would ordinarily be expected to litigate all these claims in a single suit. Petitioners' contrary arguments present no substantial issue. The fact that, in addition to the instant action against Marcos personally, the Philippines commenced several *in rem* actions involving particular pieces of property is irrelevant. Petitioners do not suggest that any of those actions would provide a preferable, or even conceivable, forum for any of the pendent claims in the instant action.[8]

In any event, if, as Amicus speculates, a more fully developed record later reveals that the claims do not arise from a common nucleus of operative facts, the District Court will be free, as the *en banc* panel noted, to again exercise its discretion, and "may conclude that some or all of the pendent claims should be dismissed." (P.A. 6a-7a.) *See Gibbs, supra*, 383 U.S. at 727. There is no reason to assume that the District Court will later resolve these issues incorrectly, and there is no point to granting certiorari only to guess what the District Court might later do in light of developments which cannot now be anticipated or fully evaluated.

C. The District Court Did Not Abuse Its Discretion in Granting a Preliminary Injunction Based on the Pendent Claims.

Petitioners seem to suggest that because RICO does not itself provide for injunctive relief, RICO somehow

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[8]Similarly, the fact that Marcos keeps a large part of his booty in numbered Swiss bank accounts provides no basis for refusing to hear the pendent claims in this country. Petitioners do not and could not suggest that Switzerland is a preferable forum for any of the instant pendent claims. Nor is there any reason to think that Swiss banking issues, if they arise, will dominate the proceedings or will be particularly difficult to decide. *See supra*, note 7.

bars the federal courts from granting such relief on pendent claims. Petitioners ask this Court to clear up "the confusion among lower courts regarding this issue." (Petition at 17.)

Petitioners failed to raise this issue below. In any event, there is no such confusion. The lower courts have consistently endorsed the practice of granting injunctions under pendent non-federal claims in RICO actions. *See, e.g., Airlines Reporting Corp. v. Barry,* 825 F.2d 1220, 1227 (8th Cir. 1987); *Religious Technology Center v. Wollersheim,* 796 F.2d 1076, 1089-90 (9th Cir. 1986), *cert. denied,* 479 U.S. 1103 (1987); *USACO Coal Co. v. Carbomin Energy, Inc.,* 689 F.2d 94, 97-98 (6th Cir. 1982); *Federal Deposit Ins. Corp. v. Antonio,* 649 F. Supp. 1352, 1354 (D. Colo. 1986); *County of Cook v. Lynch,* 560 F. Supp. 136, 140-41 (N.D. Ill. 1982).

Petitioners not only cite no evidence, they do not even allege, that Congress intended to deprive RICO plaintiffs of preliminary injunctive relief on pendent claims. Petitioners point to no policies supporting the judicial enactment of such a limitation. In contrast to the Title VII context, where a somewhat similar issue engendered some controversy among the district courts,[9] there is no reason

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[9]Petitioners argue that Title VII's provision of equitable relief bars jurisdiction over pendent claims for compensatory relief. This interpretation finds no support among the circuit courts of appeals. The Tenth Circuit has expressly rejected this position, *Jones v. Intermountain Power Project,* 794 F.2d 546, 552 (10th Cir. 1986), and overruled one of the cases cited by Petitioners, *Haroldson v. Hospitality Systems Inc.,* 596 F. Supp. 1460 (D. Colo. 1984). The Eleventh Circuit has affirmed the exercise of jurisdiction over state claims pendent to Title VII claims, *Phillips v. Smalley Maintenance Services, Inc.,* 711 F.2d 1524, 1531 (11th Cir. 1983), and the D.C. Circuit has declined to consider the issue. *Bouchet v. National Urban League, Inc.,* 730 F.2d 799, 805 n.2 (D.C. Cir. 1984).

to believe at this point that there is a "great discrepancy between the ... relief available under" RICO and the relief sought under the pendent claims. *Bouchet v. National Urban League, Inc.*, 730 F.2d 799, 805-06 (D.C. Cir. 1984) (discussing Title VII remedies). The injunction sought here is merely ancillary to the enforcement of the ultimate remedy sought under RICO and the pendent claims — money damages.

IV.

CERTIORARI SHOULD NOT BE GRANTED TO REVIEW WHETHER THE DISTRICT COURT ABUSED ITS DISCRETION WHEN IT REJECTED UNSUPPORTED AND VAGUE SPECULATIONS CONCERNING THE "POTENTIAL" FOR CONFLICT WITH FOREIGN COURTS.

Petitioners claim that this Court should review the preliminary injunction because the *en banc* panel "ignored ... comity concerns" over the extraterritorial reach of the injunction. (Petition at 19.) Here, as below, Petitioners point to no particular cause for concern, and claim only a speculative "potential" for interference with the laws or sovereignty of other nations. No such interference appears likely at this point. There is no reason to believe, for example, that Swiss courts will be offended by the District Court's order that Marcos not remove money from Swiss bank accounts. Indeed, at the request of the Philippines, Swiss authorities have frozen Marcos's assets. Given the presence of the Philippines as the plaintiff, interference with Philippine courts seems even less likely.

The *en banc* panel properly rejected Petitioners' conclusory arguments, noting that the injunction operated against Marcos personally, not *in rem*, and that there was "no reason to be concerned about its territorial reach."

(P.A. 15a.) This conclusion was neither clearly erroneous nor contrary to applicable law.

Petitioners' reliance on *Steele v. Bulova Watch Co.*, 344 U.S. 280 (1952), is misplaced. In *Bulova*, this Court held that, because the Mexican courts had expressly rejected any interest in protecting registration of the defendant's infringing trademark, the question "whether a valid foreign registration would affect the power to enjoin [use of the trademark] or the propriety of its exercise *is not before us.*" 344 U.S. at 289 (emphasis added). The Court expressed no view as to the propriety of entering the injunction if Mexican courts had upheld the registration and interference had therefore seemed likely. In the passage quoted by Petitioners, the Court merely held that, given the conceded lack of any possible interference with Mexican courts, there was no reason to question the scope of the injunction. Nothing in *Bulova* suggests that, at the preliminary injunction stage, a court must somehow imagine every conceivable interference with a foreign sovereign, or somehow guarantee that every unknown potential for interference could not possibly occur.

V.

CERTIORARI SHOULD NOT BE GRANTED TO REVIEW WHETHER THE PHILIPPINES HAS STANDING UNDER RICO.

Petitioners' final argument is that this Court should grant certiorari to determine whether the Philippines has standing to sue under RICO. Every judge on both panels of the Ninth Circuit agreed that the Philippines has such standing. Petitioners' suggestion that the issue requires resolution by this Court on this interlocutory appeal is without merit.

First, Petitioners claim there is a conflict among the lower courts as to whether any governmental entity has standing to sue under RICO. This is incorrect. In *Illinois Department of Revenue v. Phillips*, 771 F.2d 312 (7th Cir. 1985), the Court of Appeals expressly held that RICO "makes no distinction between state governments, consumers, competitors, or other victims in determining who qualifies as a person . . . ." *Id.*, at 314. The only decision cited by Petitioners for the proposition that a governmental entity does not have RICO standing is *State of Michigan, Dep't of Treasury v. Fawaz*, 653 F. Supp. 141 (E.D. Mich. 1986), *aff'd mem.*, 848 F.2d 194 (6th Cir. 1988). In that case, the district court held that the Revenue Division of the State Treasury Department did not have standing to bring a civil RICO action against a state sales tax violator. The court did not rule that a governmental entity is not generally a "person" with standing to sue under RICO. Instead, it merely held that policy considerations dictated against affording such standing to state tax collectors in particular, because "[f]ederal courts would be barraged with state agencies' vindictive civil RICO actions against tax cheaters." 653 F. Supp. at 143.

In fact, there can be little doubt that a governmental entity is a "person" generally entitled to sue under 18 U.S.C. § 1964(c). Section 1961(3) of RICO states that "person" includes *"any* individual or *entity capable of holding a legal or beneficial interest in property."* (Emphasis added.) It is beyond dispute that a sovereign state is an "entity," *see United States v. Angelilli*, 660 F.2d 23, 31 (2d Cir. 1981), *cert. denied*, 455 U.S. 910 (1982), and is capable of holding a legal or beneficial interest in property, *Cotten v. United States*, 52 U.S. 229, 231 (1851). Moreover, this Court has repeatedly held that similarly broadly worded definitions under RICO are to be given their full effect. *Russello v. United States*, 464 U.S. 16, 21

(1983) ("any interest"); *United States v. Turkette*, 452 U.S. 576, 580-81 (1981) ("any enterprise"); *see also Sedima, S.P.R.L. v. Imrex Company, Inc.*, 473 U.S. 479, 497 (1985) ("RICO is to be read broadly").

Second, Petitioners contend that the Ninth Circuit's decision creates a conflict among the circuits with regard to the "capacity" in which a governmental entity may sue under RICO. The *en banc* panel held that "[t]he foreign nature of the Republic does not deprive it of statutory personhood." (P.A. 3a.) As Petitioners concede, the panel did not distinguish between the Philippines' standing to sue for damages for alleged misappropriations from its national treasury and its standing to sue *in parens patriae* for damages to its individual citizens. Petitioners cite absolutely no authority for the proposition that a governmental entity does not have standing to sue, either under RICO or under the antitrust laws, for damages to its treasury. The "conflicting" cases Petitioners cite hold only that, under certain circumstances, a government entity does not have standing to sue for damages suffered by its individual citizens or its "general economy." *See Hawaii v. Standard Oil Co. of California*, 405 U.S. 251 (1972); *People of State of New York v. Seneci*, 817 F.2d 1015 (2d Cir. 1987); *People of State of Illinois v. Life of Mid-America Ins. Co.*, 805 F.2d 763 (7th Cir. 1986); *Pfizer, Inc. v. Lord*, 522 F.2d 612 (8th Cir. 1975). Even if the Philippines did not have standing to sue *in parens patriae*, however, it would still have standing under RICO to sue for damages to its treasury, and the District Court would still have had subject matter jurisdiction to enter the preliminary injuction. Thus, neither the District Court nor the Ninth Circuit had any need to decide whether the Philippines had standing to sue *in parens patriae* in ruling on the preliminary injunction. If that issue ever becomes relevant, it can be resolved in the first instance

by the courts below. There is no reason for this Court to grant certiorari to decide it now.

Finally, Petitioners urge the Court to grant certiorari to decide whether a foreign government should be denied standing to sue for treble damages under RICO, even though it has similar standing under the antitrust laws. *See Pfizer, Inc. v. Government of India*, 434 U.S. 308 (1978). Petitioners contend that "the principal basis" for this Court's holding in *Pfizer* — that foreign governments have standing to sue for treble damages under the antitrust laws — was "an acknowledgement that a state [or foreign government] had no alternate remedy." (Petition at 24.) Petitioners then contend that *Pfizer* is distinguishable because state and foreign governments have means under their own laws, other than federal treble damage actions, to redress injuries caused by racketeering activity.

This reading of *Pfizer* is incorrect. In *Pfizer* and in *Georgia v. Evans*, 316 U.S. 159 (1942), this Court noted that Congress did not provide state and foreign governments with remedies other than treble damages under the Sherman Act, whereas it did provide the United States Government with such other remedies. The Court never suggested that it was permitting state and foreign governments to claim treble damages because such governments did not have other remedies for the same conduct under their own or other laws. Nothing in the Sherman Act precludes state governments from outlawing anticompetitive activity and giving themselves authority to seek injunctive relief under their own laws. The point made in *Pfizer* and *Evans* was that, because *Congress* had not provided state and foreign governments with any remedies other than those provided to private parties, the Court could not conclude that Congress intended to

deprive those governments of the remedies provided to private parties under the Sherman Act.

In fact, as the *en banc* opinion held, the reasoning of this Court in *Pfizer* compels the conclusion that a foreign government may sue for treble damages under section 1964(c) of RICO. In *Pfizer*, the defendants contended that a foreign nation could not be a "person" entitled to sue under Section 4 of the Clayton Act both because "[t]hey are foreign, and [because] they are sovereign nations." 434 U.S. at 313. This Court rejected both arguments. With respect to the fact that the plaintiff was foreign, the Court noted both that a foreign corporation is entitled to sue, and that the antitrust laws extend to trade "with foreign nations." 434 U.S. at 313. While RICO's definition of "person" (unlike the Clayton Act definition) does not expressly include foreign corporations, its language is actually broader ("any entity") than that of the antitrust laws, and plainly encompasses "foreign" as well as "domestic" entities. *See Sedima, S.P.R.L. v. Imrex Company, Inc., supra* (plaintiff a Belgian corporation). Moreover, RICO extends to "foreign commerce" as well as interstate commerce, in the same way that the antitrust laws extend to trade "with foreign nations." 18 U.S.C. § 1962.

The Court in *Pfizer* added that exclusion of foreign plaintiffs from the class of "persons" entitled to sue would defeat the two purposes of the Clayton Act: "to deter violators and deprive them of ' "the fruits of their illegality" ' and 'to compensate victims of antitrust violations for their injuries.' " 434 U.S. at 314. The purposes of section 1964(c) of RICO are the same, to deter infiltration of legitimate enterprises by racketeers, by encouraging private actions to "fill prosecutorial gaps," and to compensate those injured by such activity. *Sedima, supra,*

473 U.S. at 494-95; *Turkette, supra,* 452 U.S. at 593. To deny RICO standing to foreign plaintiffs would defeat these purposes by permitting a racketeer to escape full liability for his illegal actions and by denying compensation to certain of his victims, merely because they happen to be foreign. *See Pfizer, supra,* 434 U.S. at 314-15.

This Court in *Pfizer* wrote, in language equally applicable to RICO:

> *This Court has long recognized the rule that a foreign nation is generally entitled to prosecute any civil claim in the courts of the United States upon the same basis as a domestic corporation or individual might do.* "To deny him this privilege would manifest a want of comity and friendly feeling." To allow a foreign sovereign to sue in our courts for treble damages to the same extent as any other person injured by an antitrust violation is thus no more than a specific application of a long-settled general rule. *To exclude foreign nations from the protections of our antitrust laws would, on the other hand, create a conspicious exception to this rule, an exception that could not be justified in the absence of clear legislative intent.*

434 U.S. at 318-19 (emphasis added) (citations omitted). The same is true of Petitioners' effort to deprive the Philippines of standing to sue under RICO.[10]

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[10]Petitioners contend that enforcement of RICO by the District Court in this case would somehow constitute "an unwarranted enforcement of foreign penal laws." (Petition at 25-26.) RICO, whether penal in nature or not, is not a foreign law. Moreover, in order to prevail on its RICO claims, the Philippines will be required to prove RICO predicate acts, each of which involves a violation of United States, not Philippine, law.

CONCLUSION

For the foregoing reasons, Respondent respectfully prays that the Petition for a Writ of Certiorari be denied.

Dated: March 31, 1989

Respectfully submitted,

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Case No. CIV 86-3859

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

THE REPUBLIC OF THE PHILIPPINES,
Plaintiff,

v.

FERDINAND E. MARCOS, an individual; IMELDA R. MARCOS, an individual; GREGORIO ARANETA, an individual; RAMON AZURIN, an individual; ANTONIO O. FLOIRENDO, an individual; DIOSDADO C. ORDONEZ, an individual; KRODO PROPERTIES, N.V., a Netherlands Antilles Corporation; CALMO HOLDINGS, N.V., a Netherlands Antilles Corporation; ANCOR HOLDINGS, N.V., a Netherlands Antilles Corporation; AL DJEBEL CORPORATION, a Grand Cayman Corporation; LLOYDS BANK OF CALIFORNIA, a California corporation,
Defendants.

Complaint for Damages, Injunctive Relief, Accounting, a Constructive Trust, and Other Equitable Relief for 1. Violations of the Racketeer Influenced Corrupt Organizations Act ("RICO"), 18 U.S.C. 1961 *et seq.*; 2. Conversion; 3. Fraud; 4. Constructive Fraud; 5. Constructive Trust; 6. Breach of Implied Contract; 7. Quiet Title; 8. Accounting; 9. Subrogation.

Filed June 16, 1986

DEMAND FOR JURY TRIAL

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Plaintiff THE REPUBLIC OF THE PHILIPPINES hereby files its complaint against the above-named defendants, and, demanding a trial by jury in conformity with Rule 38(b) of the Federal Rules of Civil Procedure and Rule 3.4.10.1 of the Local Rules of this United States District Court, complains and alleges as follows:

INTRODUCTION

1. This is a civil action to recover for wrongs committed by Ferdinand E. Marcos, his wife Imelda R. Marcos, and others acting in concert and as co-conspirators with them. During his twenty years as President of the Philippines, Mr. Marcos systematically converted and caused to be converted, to his own use and that of his friends, family, and associates, money, funds, and other property belonging to The Republic of the Philippines and its people. Some of the assets thus fraudulently converted originated in the United States, as the direct or indirect product of various United States-funded or supported programs of investment and assistance to the Republic of the Philippines. Other assets originated in the Philippines and were later fraudulently converted in the Philippines or the United States. After Mr. Marcos and his accomplices and co-conspirators acquired the converted assets, they caused these assets to be invested for the benefit of Mr. Marcos, his accomplices, and their families and associates, in Switzerland and in the United States. These investments were made in numerous distinct enterprises, including enterprises located in this judicial district. Such investments were employed to conceal and facilitate the frauds, conversions, and thefts perpetrated by Mr. Marcos and his accomplices and co-conspirators.

JURISDICTION

2. This Court has jurisdiction over the claims for relief alleged herein pursuant to the Racketeer Influenced and Corrupt Organizations Act ("RICO"), 18 U.S.C. §§ 1961 *et seq.,* and 28 U.S.C. § 1331. This Court has jurisdiction over the remaining claims under State and foreign law by virtue of the doctrine of pendent jurisdiction in that such claims arise from a common nucleus of operative fact and are so intertwined with the other matters pending before this Court as to make the exercise of jurisdiction appropriate.

VENUE

3. Venue of this action is proper in this judicial district pursuant to 18 U.S.C. § 1391(d) in that all of the defendants, except for Lloyds Bank of California ("Lloyds Bank"), are aliens. Venue further obtains pursuant to 18 U.S.C. § 1965(a) because certain of the defendants, *viz,* Krodo Properties, N.V., Al Djebel Corporation, and Lloyds Bank, reside, are found, have agents or transact their affairs in this judicial district. Venue further obtains pursuant to 28 U.S.C. § 1391(b) in that the claims arose in part in this judicial district.

PARTIES AND PARTICIPANTS

A. PLAINTIFF

4. The Republic of the Philippines ("Philippines") is a sovereign state recognized by the Government of the United States of America. The Philippines was formerly subject to the rule of Mr. Marcos, during which time most of the acts complained of occurred.

5. The Philippines has standing to bring this complaint and sues:

(a) In its own right, as the victim of the Defendants' unlawful acts, conspiracies, schemes, and acts of racketeering; and

(b) As the representative of its people, who were victimized by Defendants' unlawful acts, conspiracies, schemes, and acts of racketeering.

B. DEFENDANTS

6. Ferdinand E. Marcos (Mr. Marcos) was the President of the Philippines from in or about November, 1965 until his flight from the Philippines on or about February 25, 1986. His salary as President was approximately U.S. $5,600 per year. Despite Mr. Marcos' relatively small annual income from legitimate sources, Mr. Marcos, while occupying the Presidency, accumulated a net worth exceeding $1,550,000,000.00 ($1.55 billion). At least $4.8 million of this amount is presently located in California, approximately $7 million is located in the State of Hawaii, approximately $50 million is located in the State of New York, and approximately $1.5 billion is located in Switzerland. Mr. Marcos currently is located at a residence in Honolulu, in the State of Hawaii.

7. Imelda R. Marcos ("Mrs. Marcos") is the wife of Ferdinand E. Marcos; she conspired, aided and abetted, and participated with him in a culpable manner in the unlawful activities alleged in this complaint. Some of the funds illegally diverted, transported, and/or invested are currently held in Mrs. Marcos' name. She resides with Mr. Marcos in Honolulu, in the State of Hawaii.

8. Ramon Azurin ("Azurin") and Gregorio Araneta ("Araneta") are the nominees and agents of Mr. Marcos

who declared in Mr. Marcos' behalf, upon their entry into the United States in the company of Mr. Marcos, approximately $7,000,000.00 ($7 million) in currency, securities, and property consigned to Mr. Marcos, which property is presently being detained by the United States Bureau of Customs.

9. Antonio O. Floirendo ("Floirendo") and Diosdado Ordonez ("Ordonez") are managing directors and agents for Calmo Holdings, N.V. ("Calmo Holdings") and Krodo Properties, N.V. ("Krodo Properties"), both Netherlands Antilles corporations. Calmo Holdings is located in and has its principal place of business at Ordonez's home in West Orange, New Jersey. Krodo Properties is located in and has its principal place of business in Century City, California. Krodo Properties now holds a $4 million beneficial interest in a trust deed secured by property located at 1085 Summit Drive, Beverly Hills, California ("Beverly Hills Property"), whose legal description is as follows:

> Lot 1 of Tract No. 20373, as per map thereof recorded in Book 563, pages 1 and 2 of Maps, in the Office of the County Recorder of Los Angeles, County, except that portion thereof described as follows: Beginning at the southwesterly corner of said Lot 1; thence southeasterly along the southwesterly line of said Lot sixty-four (64.00) feet to the most southerly corner of said Lot; thence northeasterly along the southeasterly line of said Lot twelve (12.00) feet; thence northwesterly in a direct line to the point of beginning.

Floirendo is also the managing director and Ordonez is the attorney-in-fact, agent, and employee, of Ancor Holdings, N.V. ("Ancor"), a Netherlands Antilles corporation, which owns the Lindenmere Estate in Long Island, New

York. Ordonez and Floirendo control and manage Ancor, Calmo Holdings, and Krodo Properties for the benefit of Mr. and/or Mrs. Marcos and have conspired with, aided and abetted, and participated with Mr. and Mrs. Marcos in the creation of an elaborate network of secret corporations and other entities to conceal and facilitate the frauds, conversions, and thefts alleged in this complaint. Ordonez and Floirendo are currently located in New York or New Jersey.

10. Al Djebel Corporation ("Al Djebel") is a corporation organized under the laws of the Cayman Islands, with its principal place of business in Los Angeles, California. Al Djebel received a grant deed to the Beverly Hills Property on or about March 10, 1986, thirteen days after Mr. Marcos fled from the Philippines to Honolulu, Hawaii.

11. Lloyds Bank of California ("Lloyds Bank") is a corporation organized under the laws of California, with its principal place of business in California. Lloyds Bank holds and manages at least two accounts containing assets which were illegally acquired and maintained by Mr. and/or Mrs. Marcos and/or their agents and/or their co-conspirators. Krodo properties, Calmo Holdings, Ancor, and Al Djebel, but not Lloyds Bank, are collectively referred to herein as "the Corporate Defendants."

COMMON ALLEGATIONS

A. FRAUD AND CONVERSION OF FUNDS

12. During his twenty years as President of the Philippines, Mr. Marcos used his position of power and authority to convert and cause to be converted, to his use and that of his friends, family, and associates, money, funds, and property belonging to the Philippines and its people.

Defendants Mrs. Marcos, Azurin, Araneta, Floirendo, Ordonez, the Corporate Defendants, and others presently known and unknown to Plaintiff, participated, aided and abetted, and conspired with Mr. Marcos in the commission of these massive wrongs upon his country and people.

13. During the twenty years of his Presidency, Mr. and Mrs. Marcos filed tax returns with the Philippines Bureau of Internal Revenue showing their joint legitimate income from various limited and defined sources, including Mr. Marcos' $5,600 annual Presidential salary. According to these tax returns, Mr. and Mrs. Marcos' cumulative after-tax income for the calendar years 1965 through 1984 totalled 6,748,573 Philippine pesos, which at current exchange rates equals approximately $337,429.00. *See* Declaration of Benigno C. Alas, Jr., CPA (attached to the accompanying exhibits as Exhibit "A").

14. During the same period in which Mr. and Mrs. Marcos claimed after-tax earnings of $337,429, they amassed a personal fortune exceeding $1.55 billion, virtually all of which Mr. and Mrs. Marcos obtained by fraudulently converting monies, funds, and properties of the Philippines and its people to their personal use and that of their friends, family, and associates.

15. Immediately following Mr. Marcos' flight from the Philippines, President Corazon C. Aquino issued Executive Order No. 1 (Exhibit "B"), establishing the Presidential Commission on Good Government ("Commission"). The purpose of the Commission is to recover the "vast resources of the government" of the Philippines "ill-gotten" by Mr. Marcos. The commission was established because of the evidence in the possession of the government of the Philippines that vast sums of money were improperly or illegally used or diverted by Mr. Marcos. *See* Executive Order No. 2 (Exhibit "C").

B. DIVERSION OF FUNDS TO SECRET SWISS ACCOUNTS

16. During the period of Mr. Marcos' Presidency, Defendants Mr. and Mrs. Marcos accumulated, through the fraud and conversion of funds set forth in Paragraphs 13 through and including 16 above, approximately $1.5 billion, which they caused to be deposited in various Swiss banks under aliases or in the names of various shell entities.

17. In at least one instance, Mr. and Mrs. Marcos used the aliases William Saunders and Jane Ryan to establish such an account.

C. DIVERSION OF FUNDS TO CALIFORNIA

18. Beginning on or before November 8, 1983, and continuing until the present, Defendants Mr. and Mrs. Marcos, Floirendo, Ordonez, and the Corporate Defendants participated in and conspired to effect an elaborate scheme to invest in the Los Angeles real-estate market some of the proceeds of Mr. Marcos' massive scheme to defraud and to obtain money and property by false pretenses, promises, and representations from the Philippines and its people.

19. On or about November 8, 1983, in Los Angeles County, California and elsewhere, Defendants Mr. and Mrs. Marcos, Floirendo, and Ordonez caused Calmo Holdings to acquire a $4,000,000 beneficial interest under a Deed of Trust and Security Agreement issued on the Beverly Hills Property. Thereafter, on or about November 14, 1983, in furtherance of the fraud described in Paragraph 18 above, these Defendants and Calmo Holdings caused the Los Angeles County Recorder's Office to mail Transamerica Title Company, in Los Angeles, California, the officially-recorded Deed of Trust and Security Agree-

ment perfecting this $4,000,000 interest in the Beverly Hills Property. *See* Deed of Trust and Security Agreement (Exhibit "D").

20. On or about March 1, 1984, in New York, New York and elsewhere, Defendants Mr. and Mrs. Marcos, Floirendo, and Ordonez caused Calmo Holdings to assign and transfer its $4,000,000 beneficial interest in the Deed of Trust issued on the Beverly Hills Property to Defendant Krodo Properties. Thereafter, on or about May 24, 1984, in furtherance of the fraud described in Paragraph 18 above, these Defendants and Krodo Properties caused the Los Angeles County Recorder's Office to mail the officially-recorded Assignment of Deed of Trust to Defendant Krodo Properties at 1900 Avenue of the Stars, Suite 2000, Los Angeles, California. *See* Assignment of Deed of Trust (Exhibit "E").

21. On or about March 10, 1986, approximately thirteen days after Mr. and Mrs. Marcos' flight from the Philippines, Defendants Mr. and Mrs. Marcos, Floirendo, Ordonez, and others known and unknown to Plaintiff caused Al Djebel to acquire title to the Beverly Hills Property. Thereafter, on or about March 18, 1986, in furtherance of the fraud described in Paragraph 18 above, said Defendants and others known and unknown to Plaintiff caused the Los Angeles County Recorder's Office to mail a copy of the officially-recorded grant deed to the Beverly Hills Property to Defendant Al Djebel Corporation at 11611 San Vicente Boulevard, Suite 10, Los Angeles, California 90049. *See* Grant Deed (attached hereto as Exhibit "F").

22. At a time unknown to Plaintiff, but no later than August 8, 1985, in furtherance of the fraud described in Paragraph 18 above, Defendants Mr. and Mrs. Marcos deposited or caused to be deposited by mailing or foreign

wire transfer at least $787,972.80 with Defendant Lloyds Bank in the name of Imelda R. Marcos, in two separate accounts, numbered 4099657 and 5900020.

23. On or about August 8, 1985, Defendants Mr. and Mrs. Marcos caused to be purchased, in the name of Imelda R. Marcos, for $675,000, certain United States Treasury Bills, which will mature on August 8, 1986 in the amount of $700,000.00. These Treasury Bills are maintained in Lloyds Bank account number 4099657.

24. During the period beginning prior to August 8, 1985 and continuing to at least the date of this complaint, Defendants Mr. and Mrs. Marcos caused Defendant Lloyds Bank to establish an "LBC Auto Temp" Account No. 5900020, which now holds approximately $112,922.17 in the name of Imelda R. Marcos. During such time period, in furtherance of the fraud described in Paragraph 18 above, Defendants Mr. and Mrs. Marcos have caused Defendants Lloyds Bank to mail periodic statements showing the account balance as well as interest credited to the account.

D. FLIGHT TO HAWAII WITH DIVERTED PROPERTY

25. On or before February 25, 1986, in preparation for Defendants Mr. and Mrs. Marcos' impending flight from the Philippines, Defendants Mr. and Mrs. Marcos caused to be gathered vast amounts of currency, negotiable instruments, and easily-transportable property, valued at approximately $7 million, which they had accumulated during the twenty years of Mr. Marcos' Presidency as a result of their fraudulent schemes and conversions of money, funds, and property belonging to the Philippines and its people. They then caused this $7 million in currency, negotiable instruments, and property ("booty")

to be loaded on board the airplane which transported Defendants Mr. and Mrs. Marcos, Azurin, and Araneta to Hawaii.

26. Upon entry in Hawaii, Mr. Marcos designated Defendants Azurin and Araneta as his attorneys-in-fact for the purpose of declaring the aforesaid $7 million in booty to United States Customs and introducing it into the United States. *See* Exhibits "G" and "H". The United States Customs Service is currently detaining the $7 million in booty, but is due to return it to Defendants Mr. Marcos or Azurin or Araneta on June 16, 1986.

FIRST CLAIM FOR RELIEF

(Against All Defendants Except Lloyds Bank For Violations Of The Racketeer Influenced And Corrupt Organizations Act, 18 U.S.C. §§ 1962(c) and 1964(a) & (c))

27. Plaintiff realleges and incorporates herein by this reference as though fully set forth the allegations of Paragraphs 1 through and including 26 above.

28. During the period from in or about November 1965, until on or about February 25, 1986, the Philippines existed as a sovereign government and thus constituted a RICO "enterprise" within the meaning of 18 U.S.C. § 1961(4), as more fully described in Paragraph 29 below. The Philippines engaged in, and its activities affected, interstate and foreign commerce. Defendants Mr. Marcos, Mrs. Marcos, Floirendo, Ordonez, and the Corporate Defendants are each an "individual or entity capable of holding a legal or beneficial interest in property" and, as such, each constitutes a "person" within the meaning of 18 U.S.C. § 1961(3).

29. (a) Beginning in or about November 1965 and continuing until on or about February 25, 1986, Defendants Mr. Marcos, Mrs. Marcos, Floirendo, Ordonez, and the Corporate Defendants conducted, or participated directly or indirectly in the conduct of the affairs of the Philippines through a pattern of racketeering activity, within the meaning of 18 U.S.C. § 1961(1)(5), in violation of 18 U.S.C. § 1962(c).

(b) Alternatively, Defendants Mr. Marcos, Mrs. Marcos, Floirendo, Ordonez, and the Corporate Defendants constituted individuals and corporations associated in fact for a common purpose with an existence separate and apart from the pattern of racketeering activity in which they engaged. This association in fact constituted an enterprise within the meaning of 18 U.S.C. § 1961(4).

(c) During the period from in or about November, 1965 through on or about February 25, 1986, Defendants Mr. Marcos, Mrs. Marcos, Floirendo, Ordonez, and the Corporate Defendants, being persons employed by or associated with the enterprise described in Paragraph 27(a) above, conducted, or participated directly or indirectly in the conduct of the affairs of that enterprise, through a pattern of racketeering, within the meaning of 18 U.S.C. § 1961(1)(5), in violation of 18 U.S.C. § 1962(c).

30. From in or about November, 1965, and continuing until the present, Defendants Mr. Marcos, Mrs. Marcos, Floirendo, Ordonez, and the Corporate Defendants did knowingly and willfully commit, and aid and abet in the commission of, offenses against the United States that also constitute acts of racketeering within the meaning of 18 U.S.C. § 1961. These offenses were committed as part of a pattern of racketeering, in that they (a) consist of two or more individual offenses constituting two or more

individual episodes, and (b) were committed with the express intention and common design and purpose of converting money and property belonging to the Philippines and its people to the personal use and profit of Mr. and Mrs. Marcos, and their friends, family, and associates.

31. The pattern of racketeering alleged in Paragraph 30 above included the following acts:

(a) At various times during the period from on or about November 1965 through on or about February 25, 1986, as more fully alleged in Paragraphs 18 through and including 30 above, Defendants Mr. and Mrs. Marcos, having devised or intending to devise a scheme or artifice to defraud, or to obtain money or property by means of false or fraudulent pretenses, representations, or promises, for the purpose of executing such scheme or artifice or attempting to do so, caused numerous wire transfers in interstate and/or foreign commerce or caused numerous mailings to be delivered by the United States Postal Service to be sent and received, in violation of 18 U.S.C. §§ 1341 and 1343, and defined as racketeering activity by 18 U.S.C. § 1961(1).

(b) On or about October 25, 1986, as more fully alleged in Paragraphs 25 through and including 26 above, Defendants Mr. and Mrs. Marcos, aided and abetted by Defendants Azurin and Araneta, transported and caused to be transported in foreign commerce goods, wares, merchandise, securities, or money, having a value exceeding $5,000.00, knowing the same to have been stolen or taken by fraud from the Philippines and/or its people, in violation of 18 U.S.C. § 2314, and defined as racketeering activity by 18 U.S.C. § 1961(1).

(c) At various times during the period from on or about November 1965 through on or about February 25, 1986, as more fully alleged in Paragraphs 9, 10, and 18 through and including 21 above, Defendants Floirendo, Ordonez, and the Corporate Defendants received goods, wares, merchandise, securities, or money having a value exceeding $500.00, which had moved in or were a part of interstate or foreign commerce, knowing the same to have been stolen or taken by fraud from the Philippines and/or its people, in violation of 18 U.S.C. § 2315, and defined as racketeering activity by 18 U.S.C. § 1961(1).

(d) At various times during the period from on or about November 1965 through on or about February 25, 1986, as more fully alleged in Paragraphs 12 through and including 30 above, Defendants Mr. and Mrs. Marcos, Floirendo, Ordonez, and the Corporate Defendants concealed goods, wares, merchandise, securities, or money having a value exceeding $500.00, which had moved in or were a part of interstate or foreign commerce, knowing the same to have been stolen or taken by fraud from the Philippines and/or its people, in violation of 18 U.S.C. § 2315, and defined as racketeering activity by 18 U.S.C. § 1961(1).

(e) On or about March 1, 1984, as more fully alleged in Paragraph 20 above, Defendant Calmo Holdings sold or disposed of its beneficial interest under the Deed of Trust and Security Agreement in the Beverly Hills Property, a security, which had moved in or been a part of interstate or foreign commerce, knowing the same to have been stolen or taken by fraud from the Philippines and/or its people, in violation of 18 U.S.C. § 2315, and defined as racketeering activity by 18 U.S.C. § 1961(1).

32. As a direct and proximate result of the individual and the Corporate Defendants' violations of 18 U.S.C.

§ 1962(c), Plaintiff has suffered damages in an amount to be determined at trial and presently estimated to be not less than $1.55 billion. Plaintiff has been injured in its business or property by reason of each Defendant's RICO violations and, pursuant to the Civil Remedy Provisions of 18 U.S.C. § 1964(c), is thereby entitled to recover three-fold the damages it has suffered, together with its costs of suit and reasonable attorneys' fees.

33. By reason of the foregoing violations, Plaintiff is entitled to equitable relief pursuant to 18 U.S.C. §§ 1964(a) and (c).

SECOND CLAIM FOR RELIEF

(Against All Defendants Except Lloyds Bank For Violations Of The Racketeer Influenced And Corrupt Organizations Act, 18 U.S.C. § 1962(a) and 1964(a) & (c))

34. Plaintiff realleges and incorporates herein by this reference as though fully set forth the allegations in Paragraph 1 through and including 26 above, as well as the allegations of Paragraphs 28 through and including 33 above.

35. During the period from in or about November, 1965 through the present, the individual and the Corporate Defendants, having received income derived, directly or indirectly, from the pattern of racketeering activity described above, used and invested, directly or indirectly, proceeds of income from said illegal racketeering activity in various enterprises within the United States which were and are engaged in, or the activities of which have affected and do affect, interstate or foreign commerce, in violation of 18 U.S.C. § 1962(a). The investments in

enterprises described in Paragraphs 19 through and including 24 above included the following:

(a) The investment in the Beverly Hills Property and Deed of Trust thereto (Paragraphs 19 through and including 21);

(b) The investment in the Lloyds Bank's accounts, numbered 4099657 and 5900020 (Paragraphs 22 through and including 24).

36. As a direct and proximate result of the individual and the Corporate Defendants' violations of 18 U.S.C. § 1962(a), Plaintiff has suffered damages in an amount to be determined at trial and presently estimated to be not less than $1.55 billion. Plaintiff has been injured in its business or property by reason of each Defendant's RICO violations and, pursuant to the Civil Remedy Provisions of 18 U.S.C. § 1964(c), is thereby entitled to recover three-fold the damages it has suffered, together with its costs of suit and reasonable attorneys' fees.

37. By reason of the foregoing violations, Plaintiff is entitled to equitable relief pursuant to 18 U.S.C. §§ 1964(a) and (c).

THIRD CLAIM FOR RELIEF

(Against All Defendants Except Lloyds Bank For Violations Of The Racketeer Influenced And Corrupt Organizations Act, 18 U.S.C. §§ 1962(d) and 1964(a) & (c))

38. Plaintiff realleges and incorporates herein by this reference as though fully set forth the allegations of Paragraphs 1 through and including 37 above.

39. Beginning on or about December 1965 and continuing to the present, the individual and the Corporate

Defendants combined and conspired together and with each other to commit the aforementioned violations of 18 U.S.C. § 1962(a) and (c) and thereby violated 18 U.S.C. § 1962(d). In furtherance of the conspiracy and to effect the objects thereof, the individual and Corporate Defendants committed the following overt acts, among others, in the Los Angeles County and elsewhere:

(a) On or before August 8, 1985, in Los Angeles, California, Defendants Mr. and Mrs. Marcos caused to be transmitted to, deposited with, and held by Lloyds Bank at least $787,972.80;

(b) On or about November 8, 1983, in Los Angeles, California, the individual and Corporate Defendants caused the acquisition of the beneficial interest in the Deed of Trust to the Beverly Hills Property, and the subsequent recordation of said interest in Los Angeles County, California;

(c) On or about March 10, 1986, in Los Angeles, California, the individual and Corporate Defendants caused Al Djebel to acquire title to the Beverly Hills Property, and caused the Grant Deed transferring said title to be recorded in Los Angeles County, California;

(d) On or about February 25, 1986, defendants Mr. and Mrs. Marcos, Azurin, and Araneta caused the transportation from the Philippines to Hawaii of the $7 million in booty stolen or taken by fraud from the Philippines and/or its people; and

(e) At various times beginning in or about November 1965 and continuing through the present, Defendants Mr. and Mrs. Marcos caused to be transmitted approximately $1.5 billion to Switzerland to be deposited in Swiss bank accounts in the aliases of "William Saunders" and "Jane Ryan."

40. As a direct and proximate result of the individual and Corporate Defendants' violations of 18 U.S.C. § 1962(d), Plaintiff has suffered damages in an amount to be determined at trial and presently estimated to be not less than $1.55 billion. Plaintiff has been injured in its business or property by reason of each Defendant's RICO violations and, pursuant to the Civil Remedy Provisions of 18 U.S.C. § 1964(c), is thereby entitled to recover three-fold the damages it suffered, together with its costs of suit and reasonable attorneys' fees.

41. By reason of the foregoing violations, Plaintiff is entitled to equitable relief pursuant to 18 U.S.C. §§ 1964(a) and (c).

FOURTH CLAIM FOR RELIEF

(Against All Defendants, Except Lloyds Bank, For Conversion)

42. Plaintiff realleges and incorporates herein by this reference as though fully set forth the allegations contained in Paragraphs 1 through and including 41 above.

43. The individual and Corporate Defendants, and each of them, have wrongfully converted, aided and abetted, and caused to be converted, to their own use, and that of their friends, families and associates, money, funds, and property belonging to the Philippines and its people. Such conversions have been for the benefit of the Defendants and their families and associates, and to the detriment of the true owners of the property, the Philippines and its people.

44. Such acts of conversion included the following acts, among others:

(a) Defendants Mr. and Mrs. Marcos acquired control over approximately $797,000 in money and funds belonging to the Philippines and its people and caused said money and funds to be transported to the United States, to be deposited in Lloyds Bank account numbers 4099657 and 5900020, in Los Angeles, California, in the name of and for the benefit of Mrs. Marcos; and

(b) The individual and Corporate Defendants acquired control over approximately $4,000,000 in money, funds, and property belonging to the Philippines and its people and caused it to be transported to Beverly Hills, California, to be invested in a Deed of Trust to the Beverly Hills, Property, in the name of Calmo Holdings, and later Krodo Properties, for the benefit of the individual and Corporate Defendants.

45. The individual and Corporate Defendants unlawfully, willfully, and knowingly did combine, conspire, confederate, and agree together and with each other to convert money, funds, and property belonging to the Philippines and its people to their own use, and that of their associates. In furtherance of the conspiracy and to effect the objects thereof, the Defendants committed the overt acts, among others, alleged in Paragraph 44 above.

46. As a direct and proximate result of Defendants' acts of conversion, Plaintiff has suffered damages in an amount to be determined at trial, and presently estimated to be not less than $1.55 billion.

47. In doing the acts alleged herein, Defendants intended to injure Plaintiff and acted with conscious disregard for Plaintiff's rights. Defendants are guilty of malice, and Plaintiff is therefore entitled to punitive damages in the amount of $50 billion.

FIFTH CLAIM FOR RELIEF

(Against All Defendants, Except Lloyds Bank, For Fraud And Deceit)

48. Plaintiff realleges and incorporates herein by this reference as though fully set forth the allegations contained in Paragraphs 1 through and including 47 above.

49. During his twenty-year reign as President of the Philippines, in addition to the acts of fraud detailed in Paragraphs 12 through and including 14 above and elsewhere in this complaint, Defendant Mr. Marcos represented on countless occasions to the Philippines and its people that he was governing and would govern fairly and honestly, pursuant to his oath of office and the Constitution and Laws of the Philippines. He further made numerous and frequent declarations to his people that he had never taken money, property, or funds belonging to the Philippines or its people for his own personal use, nor that of his friends, family and associates.

50. While Mr. Marcos was President, he appointed Mrs. Marcos as Governor of Manila, the wealthiest city in the Philippines and its Capital City. Mrs. Marcos made similar representations of honesty, integrity, and willingness to act within and not above the laws to the people of the Philippines residing in Manila.

51. On the many occasions that Mr. and Mrs. Marcos made these representations to the Philippines and its people, they knew said representations to be false. They further intended that the Philippines and its people rely on these misrepresentations and thereby permit Mr. and Mrs. Marcos to remain in power and positions of authority. They further intended that the people of the Philippines would be deceived and not realize that Mr. and Mrs. Marcos, and their accomplices, family, and associates

were plundering the wealth of the country to enrich themselves at the expense of the Philippines and its people.

52. Plaintiff relied to its detriment on the representations of Mr. and Mrs. Marcos, and their accomplices, by permitting them to remain in positions of power and authority for twenty years and by allowing, through ignorance, the plunder of the country.

53. In the course of developing the elaborate scheme to defraud set forth above and in Paragraphs 12 through and including 26 above, Mr. and Mrs. Marcos secured the assistance of the remaining Defendants, as well as other family and associates. The remaining individual and Corporate Defendants unlawfully, willfully, and knowingly did combine, conspire, confederate, and agree together and with each other to facilitate, aid and abet, and conceal the scheme and artifice to defraud, and to obtain money and property by false representations and promises, by enabling the diversions of funds, as described in Paragraphs 16 through and including 17 and 18 through and including 24, and elsewhere. Such acts of facilitation and concealment included as overt acts the transactions described in Paragraph 44 above relating to the Lloyds Bank funds and the Beverly Hills Property.

54. As a direct and proximate result of Defendants' acts of fraud and deceit, Plaintiff has suffered damages in an amount to be determined at trial, and presently estimated to be not less than $1.55 billion.

55. In doing the acts alleged herein, Defendants intended to injure Plaintiff and acted with conscious disregard for Plaintiff's rights. Defendants are guilty of malice, and Plaintiff is therefore entitled to punitive damages in the amount of $50 billion.

SIXTH CLAIM FOR RELIEF
(Against The Marcos Defendants, For Constructive Fraud)

56. Plaintiff realleges and incorporates herein by this reference as though fully set forth the allegations contained in Paragraphs 1 through and including 55 above.

57. Mr. Marcos as President, and Mrs. Marcos as Governor of Manila, occupied positions of trust and confidence as to the government and people of the Philippines.

58. Mr. and Mrs. Marcos breached that trust and confidence by committing numerous acts of fraud, deceit, conversion, civil conspiracy, acts of racketeering, and other unlawful acts.

59. Plaintiff relied to its detriment on the integrity of Mr. and Mrs. Marcos; it trusted and confided in Mr. and Mrs. Marcos, and permitted them to remain in positions of power and to conduct the affairs of the Philippines virtually unchecked. As a direct and proximate result of Defendants' acts in breach of fiduciary duty, Plaintiff has suffered damages in an amount to be determined at trial, and presently estimated to be not less than $1.55 billion.

60. In doing the acts alleged herein, Defendants intended to injure Plaintiff and acted with conscious disregard for Plaintiff's rights. Defendants are guilty of malice, and Plaintiff is therefore entitled to punitive damages in the amount of $50 billion.

SEVENTH CLAIM FOR RELIEF
(Against All Defendants, Including Lloyds Bank, For Constructive Trust)

61. Plaintiff realleges and incorporates herein by this reference as though fully set forth the allegations contained in Paragraphs 1 through and including 60 above.

62. Mr. and Mrs. Marcos, by virtue of their position as President of the Philippines and Governor of Manila, respectively, occupied positions of trust as to the Philippines and its people.

63. Mr. and Mrs. Marcos violated said trust by their numerous acts of conversion, fraud, deceit, constructive fraud, civil conspiracy, acts of racketeering, and other unlawful acts.

64. As a result of these violations of trust, Mrs. Marcos acquired the funds and property held in Lloyds Bank account numbers 4099657 and 5900020.

65. As a further result of these violations of trust, Mr. and Mrs. Marcos, and the remaining individual and Corporate Defendants, acquired the Beverly Hills Property.

66. As a further result of these violations of trust, Mr. and Mrs. Marcos acquired approximately $1.5 billion in deposits in Swiss banks under the aliases "William Saunders" and "Jane Ryan."

67. As a further result of these violations of trust, Defendants Mr. and Mrs. Marcos, Araneta, and Azurin acquired the approximately $7 million in booty which they transported to Hawaii on or about February 26, 1986.

68. It would be unconscionable for Defendants to retain any of these funds or properties. Unless a constructive trust is imposed as to these properties, Defendants will be unjustly enriched at Plaintiff's expense.

69. By reason of the foregoing, Defendants hold the property set forth in Paragraphs 64 through and including 67 above, as well as other property obtained by means of fraud, deceit, conversion, breach of fiduciary duty, acts of racketeering, and other unlawful acts, in a constructive trust of Plaintiff.

EIGHTH CLAIM FOR RELIEF

(Breach of Implied Contract Against Ferdinand E. Marcos)

70. Plaintiff realleges and incorporates herein by this reference as though fully set forth the allegations contained in Paragraphs 1 through and including 69 above.

71. In or about November, 1965, Mr. Marcos assumed the office of the President of the Philippines. Before doing so, he took the Oath of Office (Exhibit "I").

72. By accepting the duties and obligations imposed by the oath, in consideration for the remuneration, financial and honorary, provided by Philippine law, Mr. Marcos entered into an implied contract with the Philippine government to use the powers of the Presidency according to law, in good faith, and not for personal aggrandizement.

73. By diverting funds owned by the Philippine government in the United States to his personal use as more fully described in Paragraphs 66 through and including 67 above, Mr. Marcos breached this contract.

74. As a result of said breach, the Plaintiff has suffered damages in an amount to be determined at trial, and presently estimated to be not less than $1.55 billion.

75. In doing the acts alleged herein, Defendants intended to injure Plaintiff and acted with conscious disre-

gard for Plaintiff's rights. Defendants are guilty of malice, and Plaintiff is therefore entitled to punitive damages in the amount of $50 billion.

NINTH CLAIM FOR RELIEF

(For Quiet Title)

76. Plaintiff realleges and incorporates herein by this reference as though fully set forth the allegations contained in Paragraphs 1 through and including 26 above.

77. Mr. and Mrs. Marcos, and the remaining individual and Corporate Defendants, acquired properties, real and personal, with funds stolen or taken by fraud from the Philippines and/or its people. The properties herein referred to belong to the Plaintiff. The said Defendants have no right, title, or lawful interest in the said properties.

78. The properties are:

(a) Accounts held by Lloyds Bank of California in the name of Imelda R. Marcos, specifically account numbers 4099657 and 5900020.

(b) The beneficial interest in a trust deed to the Beverly Hills Property legally described in Paragraph 9 above, held in the name of Krodo Properties, which corporation is owned and/or controlled by Mr. and/or Mrs. Marcos or their accomplices or coconspirators.

(c) The Beverly Hills Property, legally described in Paragraph 9 above, held by Al Djebel, which corporation is owned and/or controlled by Mr. and/or Mrs. Marcos or their accomplices or coconspirators.

(d) Booty worth $7 million transported by Mr. and/or Mrs. Marcos and/or their nominees and/or agents, Azurin and Araneta, from the Philippines to the United States in February 1986, currently in the custody of the United States Bureau of Customs.

TENTH CLAIM FOR RELIEF
(For An Accounting)

79. Plaintiff realleges and incorporates herein by this reference as though fully set forth the allegations of Paragraphs 1 through and including 78 above.

80. The net worth of Mr. and Mrs. Marcos is in excess of their declared legal sources of income.

81. Some of the funds currently held by Mr. and/or Mrs. Marcos in the United States were misappropriated from the Philippines and its people.

82. Some of the funds, negotiable instruments, and personal property owned by Mr. and/or Mrs. Marcos is currently held by Lloyds Bank.

83. Mr. and Mrs. Marcos have not accounted to the Republic of the Philippines for the value of the money, securities, and personal property of the Plaintiff taken by these Defendants for their own use and benefit. The other individual and Corporate Defendants and Lloyds Bank, have not accounted to the Republic of the Philippines for the value of funds, negotiable instruments, and personal property of the Plaintiff taken by Mr. and/or Mrs. Marcos and held by these Defendants on behalf of Mr. and/or Mrs. Marcos.

84. By reason of the foregoing, the Plaintiff is entitled to an accounting.

ELEVENTH CLAIM FOR RELIEF
(For Subrogation)

85. Plaintiff realleges and incorporates herein by this reference as though fully set forth the allegations in Paragraphs 1 through and including 84 above.

86. In conducting the affairs of the various enterprises, including but not limited to the Republic of the Philippines and the associations in fact described in Paragraph 31 above, the individual and Corporate Defendants acquired rights or claims for payment from third parties or from each other. To the extent these Defendants have a right or claim to a payment from third parties or from each other, Plaintiff should be substituted in the place of these Defendants as the equitable holder of such claim or right under the doctrine of subrogation.

WHEREFORE, Plaintiff prays for judgment as follows:

1. *On the First Claim for Relief*

(a) For compensatory damages according to proof, trebled pursuant to 18 U.S.C. § 1964(c);

(b) For reasonable attorneys' fees;

(c) For an order requiring the Defendants to disgorge themselves of any illegal profits and to divest themselves of any interest in the Philippines;

(d) For other appropriate equitable relief;

(e) For costs of suit incurred herein; and

(f) For such other and further relief as the Court may deem proper.

2. *On the Second Claim for Relief*

(a) For compensatory damages according to proof, trebled pursuant to 18 U.S.C. § 1964(c);

(b) For reasonable attorneys' fees;

(c) For an order requiring the Defendants to disgorge themselves of any illegal profits and to divest themselves of any interest in the Beverly Hills Property and the Lloyds Bank accounts, numbered 4099657 and 5900020;

(d) For other appropriate equitable relief;

(e) For costs of suit incurred herein; and

(f) For such other and further relief as the Court may deem proper.

3. *On the Third Claim for Relief*

(a) For compensatory damages according to proof, trebled pursuant to 18 U.S.C. § 1964(c);

(b) For reasonable attorneys' fees;

(c) For an order requiring the Defendants to disgorge themselves of any illegal profits and to divest themselves of any interest in the Philippines, the Beverly Hills Property and the Lloyds Bank account numbers 4099657 and 5900020;

(d) For other appropriate equitable relief;

(e) For costs of suit incurred herein; and

(f) For such other and further relief as the Court may deem proper.

4. *On the Fourth Claim for Relief*

(a) For compensatory damages according to proof;

(b) For punitive and exemplary damages;

(c) For reasonable attorneys' fees;

(d) For equitable relief;

(e) For costs of suit incurred herein; and

(f) For such other relief as the Court may deem proper.

5. *On the Fifth Claim for Relief*

(a) For compensatory damages according to proof;

(b) For punitive and exemplary damages;

(c) For reasonable attorneys' fees;

(d) For equitable relief;

(e) For costs of suit incurred herein; and

(f) For such other relief as the Court may deem proper.

6. *On the Sixth Claim for Relief*

(a) For compensatory damages according to proof;

(b) For punitive and exemplary damages;

(c) For reasonable attorneys' fees;

(d) For equitable relief;

(e) For costs of suit incurred herein; and

(f) For such other relief as the Court may deem proper.

7. *On the Seventh Claim for Relief*

(a) For a constructive trust as to Lloyds Bank account numbers 4099657 and 5900020;

(b) For a constructive trust as to the beneficial interest in, and the title to, the Beverly Hills Property;

(c) For a constructive trust as to assets held by Mr. and Mrs. Marcos in Swiss banks;

(d) For a constructive trust as to booty transported by the Defendants to Hawaii, currently in the custody of the United States Bureau of Customs;

(e) For other appropriate equitable relief;

(f) For reasonable attorneys' fees;

(g) For costs of suit incurred herein; and

(h) For such other relief as the Court may deem proper.

8. *On the Eighth Claim for Relief*

(a) For compensatory damages according to proof;

(b) For reasonable attorneys' fees;

(c) For costs of suit incurred herein; and

(d) For such other relief as the Court may deem proper.

9. *On the Ninth Claim for Relief*

For a judgment

(a) That Plaintiff is the owner in fee simple of the Lloyds Bank accounts, described in Paragraph 78(a) above;

(b) That Plaintiff has been the owner in fee simple of the Lloyds Bank accounts described in Paragraph 78(a) above since the accounts were opened and entitled to any interest, dividends, or other earnings accrued thereon;

(c) That Plaintiff is the owner of the beneficial interest in the trust deed of the Beverly Hills Property, described in Paragraph 78(b) above;

(d) That Plaintiff is the owner in fee simple of the Beverly Hills Property described in Paragraph 78(b) above;

(e) That Plaintiff is the owner in fee simple of the negotiable instruments and personal property described in Paragraph 78(c) above; and

(f) That Plaintiff has been the owner in fee simple of the negotiable instruments and personal property described in Paragraph 78(d) above since a date to be determined at trial, but not later than February 26, 1986, and is entitled to any interest, dividends, or other earnings accrued thereon.

(g) For reasonable attorneys' fees;

(h) For costs of suit incurred herein; and

(i) For such other relief as the Court may deem proper.

10. *On the Tenth Claim for Relief*

(a) For an accounting;

(b) For reasonable attorneys' fees

(c) For other appropriate equitable relief;

(d) For costs of suit herein; and

(e) For such other relief as the Court may deem proper.

11. *On the Eleventh Claim for Relief*

(a) For a subrogation of any rights or claims for payment acquired by the individual and Corporate Defendants from third parties or from each other;

(b) For reasonable attorneys' fees;

(c) For costs of suit herein; and

(d) For such other relief as the Court may deem proper.

DATED: June 16, 1986

PRESIDENTIAL COMMISSION ON
GOOD GOVERNMENT
REPUBLIC OF THE PHILIPPINES
SEVERINA B. RIVERA

MUNGER, TOLLES & OLSON
RONALD L. OLSON
RICHARD B. KENDALL
JOSEPH D. LEE
FELICIA A. MARCUS
JOSE Y. LAUCHENGCO, JR.

By _____
Richard B. Kendall
Attorneys for Plaintiff
Republic of the Philippines

VERIFICATION

I, RAFAEL FERNANDO, am the Representative and Coordinator of the Presidential Commission on Good Government with respect to all activities of the Commission on the West Coast of the United States. I have read the foregoing complaint and know the contents thereof. The same is true of my own knowledge, except as to those matters which I know only upon information and belief, and as to those matters, I believe them to be true.

I declare under penalty of perjury and under the laws of the State of California that the foregoing is true and correct.

Executed at Los Angeles, California on June 16, 1986 .

/s/

RAFAEL FERNANDO

PROOF OF SERVICE BY MAIL

STATE OF CALIFORNIA
COUNTY OF LOS ANGELES } ss.:

I am a citizen of the United States and a resident of or employed in the City of Los Angeles, County of Los Angeles; I am over the age of 18 years and not a party to the within action; my business address is 1706 Maple Avenue, Los Angeles, California 90015.

On March 31, 1989, I served the within Brief in Opposition to Petition for a Writ of Certiorari in re: "Ferdinand Marcos, Imelda Marcos vs. Republic of the Philippines" in the United States Supreme Court, October Term 1988, No. 88-1431; on all parties interested in said action, by placing one true copy thereof enclosed in a sealed envelope, with postage thereon fully prepaid, in the United States Post Office mail box at Los Angeles, California, addressed as follows:

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All parties required to be served have been served.

I declare under penalty of perjury, that the foregoing is true and correct.

Executed on March 31, 1989, at Los Angeles, California

J. Gordon Hooper

J. GORDON HOOPER